

**MINUTES  
of the  
SECOND MEETING  
of the  
LAND GRANT COMMITTEE**

**July 23 and 24, 2007  
St. Anthony's Parish Center  
Questa**

The second meeting of the Land Grant Committee (LGC) for the 2007 interim was called to order by Representative Miguel P. Garcia, chair, on Monday, July 23, 2007, at 10:19 a.m. in St. Anthony's Parish Center in the Village of Questa.

**Present**

Rep. Miguel P. Garcia, Chair  
Sen. Richard C. Martinez, Vice Chair  
Sen. Rod Adair  
Sen. Joseph J. Carraro  
Rep. Jimmie C. Hall  
Rep. Debbie A. Rodella

**Absent**

Rep. Justine Fox-Young  
Rep. Manuel G. Herrera  
Sen. Gerald Ortiz y Pino  
Sen. James G. Taylor

**Advisory Members**

Rep. Paul C. Bandy  
Sen. Carlos R. Cisneros  
Rep. Thomas A. Garcia  
Sen. Bernadette M. Sanchez

Sen. Phil A. Griego  
Rep. Ben Lujan  
Sen. William E. Sharer  
Rep. Eric A. Youngberg

**Guest Legislators**

Rep. Roberto "Bobby" J. Gonzales

**Staff**

Jon Boller  
Tamar Stieber

**Guests**

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

**Monday, July 23**

## **Welcome, Introductions and Invocation**

Representative Miguel P. Garcia, speaking in English and Spanish, welcomed an audience of about 70 people to the first meeting in Questa of the LGC. Representative Garcia thanked the *buena gente* of the village and the San Antonio del Rio Colorado Land Grant for hosting the meeting and inviting everyone present to lunch. After an invocation by Eligio Chavez, a senior *hermano* of the Fraternidad Piadosa de Nuestro Padre Jesus Nazareno, the committee members and staff introduced themselves. Representative Miguel Garcia said the committee plans on doing great things, then introduced Mayor Malaquias Rael.

Mr. Rael thanked the committee for the opportunity to hear first-hand what is going on in the legislature and for allowing the village to give its input regarding land grants. He noted that while a lot has been written about land grants, very little is truly understood about them. He described the issue as "very delicate to discuss because no one is sure what to discuss, how to discuss it and if it is even worth discussing".

After thanking the sponsors of the meeting, Mr. Rael introduced Taos County Commissioner Charlie Gonzales, who explained that the San Antonio del Rio Colorado Land Grant still has not received a patent from the federal government despite applications going back over 100 years. Mr. Gonzales also noted that while New Mexico sends water from the Sangre de Cristo Mountains to Texas, the local water association does not have funds to repair the dam, which is breached, and has no water for crops.

Representative Miguel Garcia recognized Michael Lopez from the office of Congressman Tom Udall, New Mexico Democratic Party Chairman Brian Colon and former state Senator Arthur Rodarte. Representative Garcia said the LGC has made history by meeting in communities that no other legislative committee has visited. "But our [purpose] is not to make history", he said. "It's to empower and strengthen the land grants in New Mexico. It's kind of hair-raising that we're doing this".

## **History of the LGC**

Representative Miguel Garcia presented a brief history of the LGC, which he said was created in 2003 to uphold the Constitution of New Mexico and respect the conditions of the Treaty of Guadalupe Hidalgo. He said the committee was the land grant community's "voice in the legislature" and that it "grew from the bottom up".

"We didn't just start with *politicos*, but with people like you", he said. "That's why people appreciate this committee. We have a heart and a conscience and we try to do what is in the best interest of *la gente* and the state".

Representative Miguel Garcia described some of the actions the state has taken affecting land grants. They include:

- creating a registry of land grants with the secretary of state. Representative Miguel Garcia urged all land grants to register, whether or not they have a patent;
- providing political subdivision status for *mercedes* (land grants), similar to that of school boards and soil conservation districts and acequias. Like those districts, land grants registered as political subdivisions must adhere to rules for open meetings, public records, etc., to avoid conflicts of interest and corruption and to allow for more public participation;
- prohibiting adverse possession lawsuits against land grants organized as subdivisions under Chapter 49, Article 1 NMSA 1978;
- providing for the right of first refusal by which land grants can match the highest bidder at delinquent tax auctions for land within its boundaries; and
- appropriating money for the State Archives and Records Center to research state-owned properties to determine which ones are part of land grants so the state can arrange agreements to hand them back.

### **Land Grant Studies Program, University of New Mexico (UNM)**

Dr. Manuel Garcia y Griego, director of UNM's Southwest Hispanic Research Institute, described what a land grant studies program could offer. He said such a program could help teach future leaders about land grants; assist land grants in documenting their histories; serve as a catalyst to coordinate the use of existing resources of the university; provide technical assistance to land grants; and support internships and fellowships for students studying land grant issues.

Dr. Garcia y Griego said that while many students express interest in land grant issues, they do not have the support to do the work. His goal is to establish undergraduate internships and pre-doctoral fellowships to support students who want to help land grant communities with legal and historical research. He envisions one or two fellowships and perhaps up to 10 internships to start, with more to follow as the program matures.

Dr. Garcia y Griego said that while the land grant studies program did not get included in the university's priorities last year – nor did a bill that included funding for the program survive the Senate during the last legislative session – the institute has submitted a request this summer to include the program in UNM's priorities. He said the program and the funding request have the support of the university's senior administration, which he said suggests that the regents will probably support it as well.

Representative Rodella moved that the committee write a letter to the board of regents in support of the program. The motion was seconded and passed unanimously and staff was directed to draft the letter.

Representative Thomas Garcia asked whether UNM's law school could offer a degree in land grant and water issues. Dr. Garcia y Griego said that while law school faculty associated with the Southwest Hispanic Research Institute are supportive of a land grant studies program,

he does not foresee it turning into a degree program any time soon. He said existing law school programs dealing with Native American issues could act as a "wedge" to get a land grant degree program started in the future. In the meantime, he would like to see UNM offer a certificate in land grant studies with the idea of moving toward a multidisciplinary degree program.

Representative Thomas Garcia wanted to know if the UNM program would assist individuals in researching their personal histories and genealogies as they relate to land grants. Dr. Garcia y Griego said the institute is designing a program specifically for that purpose. Representative Thomas Garcia said that Congressman Udall, as a graduate of UNM's law school, supports such a program.

Representative Hall suggested that the law school and UNM's Zimmerman Library coordinate efforts with regards to land grant issues, particularly those of governance, how to draft bylaws and perhaps even grant writing.

Senator Sanchez noted that lawmakers have unsuccessfully introduced legislation in the House and Senate to fund a land grant studies program and wanted to know when the university would consider giving priority status for funding the program. Dr. Garcia y Griego said that the regents meet in August. Senator Sanchez said it is key that funding for the program be part of the legislative package and that, with lobbying and other efforts, it may pass in the upcoming session.

### **Land Grant History – San Antonio del Rio Colorado**

Esther Garcia and Mayor Rael presented a detailed history of the San Antonio del Rio Colorado Land Grant, which was founded by 54 families who arrived in 1815 and were granted possession in 1842 – six years prior to the signing of the Treaty of Guadalupe Hidalgo. Ms. Garcia said the families filed for validation in 1872 and the surveyor general gave their application a "do pass", but Congress never acted on it. She said they filed again in 1874, but Congress again did not act. In 1886, the surveyor general rejected the families' legal title for land grant status, Ms. Garcia said. To date, the land grant has not received legal status. Ms. Garcia asked the committee to intervene with New Mexico's congressional delegation to get legal recognition for the land grant.

Noting that some of the San Antonio del Rio Colorado Land Grant lies in United States Forest Service (USFS) and Bureau of Land Management (BLM) districts, Ms. Garcia said heirs are being charged fees to use what they consider to be their own land. Ms. Garcia stressed that the heirs are not trying to reclaim the land from the BLM or USFS, they just want to be consulted in its management.

Representative Bandy asked how to determine who the heirs are. Ms. Garcia told him to look around the room at the audience. She said they are all descended from the original 54 families.

Responding to a question from Representative Thomas Garcia, Ms. Garcia said the land grant community is worried about Senator Jeff Bingaman's legislation creating a wilderness conservation area that would encompass the San Antonio del Rio Colorado, Sangre de Cristo, Arroyo Hondo and Cristobal de la Serna land grants because heirs fear the legislation would result in further restrictions on their use of the land, especially on grazing cattle.

Representative Thomas Garcia asked that affected land grant communities write to the New Mexico congressional delegation with their concerns. He said it is not just a fight for land grants, but also for the economic viability of Taos County and the Village of Questa. Mayor Rael agreed, saying that Questa is in the heart of one of the most beautiful areas of New Mexico and residents ought to "quantify and take advantage of it" economically.

Representative Rodella said the committee seeks an inventory of state lands that once were common lands and wants to see some of those lands returned to the original owners. Federal lands, however, require federal approval. Representative Miguel Garcia said it is the role of the Guadalupe Hidalgo Treaty Division (GHTD) of the Attorney General's Office (AGO) to "wage a fight" against the federal government.

#### **Guadalupe Hidalgo Treaty Division, AGO**

Representative Miguel Garcia said that while it is important for land grants to lobby state legislators, they should also seek support from the AGO for land grant claims, especially when they require federal intervention. However, the division has not yet been funded. Representative Miguel Garcia urged audience members to contact the AGO "before the week is out" to get funding for the GHTD because it has the internal structure to wage a fight against the federal government. "If the main law enforcement officer in the state doesn't stand up to the plate, we're just whistling Dixie", he said.

Representative Miguel Garcia also urged the GHTD to comment on the 2004 report by the United States General Accountability Office (GAO) called *Treaty of Guadalupe Hidalgo: Findings and Possible Options Regarding Longstanding Community Land Grant Claims in New Mexico*. The report concluded that there were no outright violations of the treaty, only shortcomings in the process the federal government used to confirm or deny land grants. Representative Miguel Garcia noted that the committee had invited Attorney General Gary King to the meeting, but the attorney general had prior commitments and, instead, will attend the committee's August meeting. Senator Sanchez said the attorney general was "real supportive" of the GHTD but needed additional full-time employees (FTEs) assigned to the division.

#### **June 1, 2007 Minutes**

On a motion by Senator Martinez, seconded by Representative Rodella, the committee approved the minutes from the committee's June 1 meeting in Santa Fe.

### **Cristobal de la Serna Land Grant**

Representative Miguel Garcia recognized former state Senator Francisco Comanche Gonzales. Senator Gonzales said he is a member of the Cristobal de la Serna Land Grant in Taos County and that more than 500 acres of the land grant have been stolen from the heirs. He said a local district judge ruled that the land is private. Now, he said, developers are planning to build homes there. He said the development is tantamount to "land grants for the rich" and blamed the situation on a 1942 survey that he said was done incorrectly. He asked the committee to help stop the development and get the property "back on track as a community land grant" by providing money to Taos County to redo the survey. Representative Miguel Garcia deferred the matter to the public comment portion of the meeting.

### **Audit Requirements and Procedures for Land Grants**

JoAnn Chavez, audit director at the Office of the State Auditor, explained to the committee that land grants with political subdivision status that receive state funds are subject to an annual audit as required by the state's Audit Act and must follow the rules and procedures outlined in the act. They include:

- an adequate accounting system;
- financial software, such as QuickBooks;
- records to be made available for auditing;
- internal controls to prevent fraud, waste and abuse;
- daily monitoring of financial activities; and
- ensurance that the land grant is functioning as prescribed by its board of governors.

Ms. Chavez reiterated that land grants with political subdivision status also must adhere to:

- oversight by the Department of Finance and Administration (DFA);
- the Open Meetings Act; and
- the Public Records Act.

Ms. Chavez said the legislature should consider an annual appropriation to help land grants pay the start-up costs for setting up an accounting system and to pay for annual audits, which start at \$5,000 for even the most basic audit.

Senator Carraro said the audit requirement sounds like an unfunded mandate for organizations that have very little money. Ms. Chavez said the same problem plagues all of rural New Mexico. She said her office, which serves over 600 agencies, does not have the staff to do all the audits itself, so it hires contract auditors who, she said, "will not do it for free".

Noting that New Mexico "finally [has] an auditor that seems to know what his job is", Senator Carraro suggested that the committee request a statewide appropriation for the Office of the State Auditor specifically to audit land grants with political subdivision status.

"Most of these people are playing catch-up", he said. "They're using gum and thread to keep things together. Now it's another thing we're putting on them. We, as a state, have a

responsibility to have an audit from the state and have the state pay for it".

Senator Sanchez estimated it would cost a minimum of \$115,000 to audit the state's 23 or 24 land grants that fall under the political subdivision status.

Arturo Archuleta, director of planning and a loan officer for the North Central New Mexico Economic Development District, said some land grants have annual budgets of only \$80.00 and that a \$5,000 audit would pose a serious hardship. He said the state auditor has been very supportive in recommending solutions in those cases.

Representative Hall asked if the state can legislate thresholds at which land grants would be audited. Ms. Chavez said it is an "excellent idea" that she thinks the state auditor would support, but first it must be passed into law. She said the Office of the State Auditor would be happy to provide recommendations and options so the committee could draft legislation identifying thresholds at which land grants would be audited.

Representative Miguel Garcia asked for, and received, a consensus from the committee to work with the Office of the State Auditor on drafting legislation for auditing land grants that would be compatible with the Audit Act and fair to land grants.

### **Mortgage Finance Authority**

Lionel Olguin, director of community development for the New Mexico Mortgage Finance Authority (MFA), said the MFA has been working with land grants since 2003 to help finance "affordable, suitable and safe housing" on community land. Mr. Olguin outlined the MFA's proposal to provide low-cost single-family home loans and infrastructure loans to the Chilili Land Grant using a model similar to that for Native American and other trust lands, including:

- ascertaining boundaries for residential housing and developing the lots with an eye to marketability, for which the MFA could provide technical assistance;
- ensuring that potential buyers qualify for affordable housing under MFA guidelines;
- requiring the land grants to maintain records of MFA-financed residences, including availability to heirs;
- keeping legal control of the property with the land grant such that homeowners function as tenants with long-term leases — unless the land grant chooses to transfer the property rights; and
- requiring the land grant to find a replacement owner should the original owner default on the MFA mortgage.

Mr. Olguin explained that, as the lender, the MFA absorbs any loss should a homeowner default and the land grant is unable to find a replacement homeowner.

Noting that the MFA is a state agency, Representative Hall asked if land grant housing would be available to the general public. Mr. Olguin said it is up to the land grant governing

body, not the MFA, to decide who will live on land grant property, but he assumes that only land grant members would be eligible for land grant housing.

Senator Martinez asked if the land grant governing body would serve a similar function as public housing authorities. Mr. Olguin said that is an option, but it would not be a requirement.

Representative Gonzales asked if the land grant could buy the land and develop it as rental property. Mr. Olguin said that is entirely up to the land grant governing body, not the MFA, which "is simply providing information and assistance in approaches a land grant can take".

Representative Miguel Garcia called the MFA proposal a creative way to "keep our kids in our villages and land grant communities by providing affordable housing". Mr. Olguin agreed, describing the program as a "new initiative...that calls for imagination". He said the MFA is also working with Habitat for Humanity to help develop the program.

### **Arroyo Hondo Arriba Community Land Grant**

David Arguello and Elias Espinoza of the Arroyo Hondo Arriba Community Land Grant presented a brief history of that land grant. Mr. Arguello said the founders petitioned for the land grant in 1815 and took possession in 1823. In 1892, he said, the Court of Private Land Claims confirmed the land grant. Mr. Arguello said the claims court denied 94 percent, or 34 million acres, of land grant claims between 1891 and 1892, which he said contributed "prolonged poverty" in northern New Mexico. Today, he said, the Arroyo Hondo Arriba land grant has 34 members who pay a \$20.00 annual fee. At that rate, he said, it would take the land grant eight years to pay for one audit if it acquired political subdivision status. Mr. Arguello said other issues facing the land grant include:

- judicial confusion, such as a decision by the district court to make a private access road maintained by the land grant a public road open to a nearby expensive subdivision, and to make a public road five miles away a private road inaccessible to land grant heirs;
- because the land grant had trouble meeting its tax obligations, some heirs sold common lands to private parties in the 1970s. Those tracts became Gallina Mesa and Deer Mesa and began an era in which "huge, unmanageable subdivisions" sprang up with roads at 22 percent grades, Mr. Arguello said. The resulting erosion has damaged the acequia five times since 1974;
- newcomers trespass on land grant property and do not acknowledge the trails that land grant heirs have used since the 1790s;
- the Taos Ski Valley strains water supplies, and its sewage system has contaminated the ground water; and
- of the land grant's original six square miles, only 620 acres remain and it is not contiguous.



Mr. Arguello and Mr. Espinoza said the land grant has spent a lot of money to protect its rights to the land and the acequia, which Mr. Arguello said are "inseparable".

"Now we have 40 houses on 240 acres with each one having a guest house", Mr. Arguello said. "When did a piece of land start as a quitclaim for \$40 and a bottle of wine?"

Mr. Arguello said land grants need strong land use management to stop development when it is harmful. He also suggested arresting people who trespass "so the authority we have historically has teeth". He commended the Land Grant Committee for its work and asked that the body not die.

Representative Miguel Garcia said, "There's the law of the greedy and there's the law of self-defense", recalling how, in the 1950s, you could see land grant heirs carrying sidearms to protect their land.

Senator Carraro said he does not think people should have the right to kill trespassers, though he said trespassers have the "right" to be shot – at least in the leg. He wanted to know who sold the land and under what authority. Mr. Arguello said land grant heirs who could not afford back taxes gave up their land. Mr. Espinoza said an Anglo person paid the back taxes, took possession of the land and sold 500 acres of it to private parties, prompting Senator Carraro to say, "We need to stop further erosion of land grants through sales that will probably prove illegal in future". Senator Carraro asked if there is a "champion" who understands land grants and said the committee has to "take a stand" and fight corruption at the county and judicial level and to get compensation for heirs who lost their land to "unscrupulous people". He asked that the AGO look into the issue.

### **Sangre de Cristo Land Grant**

The committee heard from Shirley Otero of San Luis, Colorado, and Paul Martinez of Amalia. They presented background about the southern Colorado and northern New Mexico portions, respectively, of the Sangre de Cristo Land Grant.

Ms. Otero, president of the Land Rights Council in San Luis, described the lawsuit, *Rael v. Taylor*, that the Colorado heirs to the Sangre de Cristo Land Grant won. It grants them access to the 77,000-acre Taylor Ranch for grazing, firewood and timber. She offered to share with the committee the legal and other information that came out of that lawsuit "for free, so you don't have to go through same struggles we had to".

Mr. Martinez said a large corporation is already "making moves to purchase large tracts of land" in the Sangre de Cristo Land Grant and that ranchers are buying chamisa land with the intention of subdividing it for housing developments. He said he is working with former State Historian Robert Torres and the Department of Game and Fish to change the game refuge status of the Department of Game and Fish-owned Urraca Ranch between Questa and Costilla so that

heirs can graze cattle there. He said he is also working with the USFS to open the Valle Vidal and Cabresto Lake to traditional uses.

Mr. Martinez complained that the Rio Costilla Community Livestock Association (RCCLA), which he said has limited membership that excludes many land grant heirs, has leased land grant property to the federal government. He said the RCCLA is trying to negotiate land and water rights in the name of the Sangre de Cristo Land Grant, but that land grant heirs do not have a voice in its negotiations because, he said, the RCCLA does not open its meetings to the public.

Mr. Martinez asked the committee to:

- research chains of title throughout the Sangre de Cristo Land Grant, saying it would find "many bad, illegal, unlawful transactions";
- work on returning the Urraca Ranch to the land grant;
- help the land grant acquire Ski Rio;
- get the state to honor its commitment in the Valle Vidal; and
- stop the BLM from creating conservation areas in northern New Mexico.

Representative Miguel Garcia said Mr. Martinez should submit to staff the history, problems and proposed solution or action he thinks is necessary regarding Ute Mountain and the surrounding conservation areas so staff could help draft a memorial for the legislative session. He said he is willing to visit personally with the RCCLA to encourage the organization to work with the community land grant.

Representative Rodella said the Tierra Amarilla Land Grant in her district also has problems dealing with the Department of Game and Fish, which she called "arrogant".

Ms. Otero said Colorado's wildlife department wanted Sangre de Cristo Land Grant heirs to stop grazing sheep in order to protect the bighorn sheep population. She said the heirs refused because bighorn sheep are not native to the area. Senator Adair responded that domestic sheep are not native, nor are cows or horses. "If you go down that road", he said, noting that not all the pueblos agree with land grant claims, "... that would mean all of your livestock would not be allowed."

### **Audience Comments**

Gilbert Segura, a member of the Plaza de Guadalupe Land Grant, asked about the rights of heirs to land grants that, like his, were not recognized by the surveyor general or the federal land claims court, have never been adjudicated and are now managed by the BLM. He asked if the committee could intervene on their behalf with the AGO. Representative Miguel Garcia said it is more important that the land grant heirs communicate directly with the AGO and urge it to get full funding for the GHTD.

Senator Carraro said the committee needs to identify how much money the AGO will need to fund the GHTD. Representative Hall suggested that with an extra \$130 million in state revenues projected for next year, the committee should support funding of the land grant studies program as well.

Alvin Garcia, an assistant attorney general in the AGO's civil division and the point person there for land grant issues, said that during the last legislative session the AGO sought a half-million dollars to fund three FTEs to staff the GHTD, but got only \$20,000. Senator Sanchez said the language she inserted in an appropriation bill was to fund the AG's response to the GAO report.

Mr. Alvin Garcia, who is also legal counsel for the State Game Commission, said there are significant issues surrounding land grant transfers, including:

- the state would have to pay the federal government in certain cases; and
- the legislature must approve any transfer of property valued at more than \$100,000.

Calling land grants the "neglected stepchild of government", Mr. Alvin Garcia said he has been coordinating with Sarah Cottrell, the land grant person in the Governor's Office, to get the division up and running. He asked the committee's help in familiarizing the DFA and the Legislative Finance Committee (LFC) with the GHTD so they are not "shocked" when the funding request appears as a budget item.

Senator Carraro moved that the committee send a letter to the Governor's Office and the DFA that explains how much money the GHTD needs and exactly what it will pay for. He suggested that the committee chair be present during the LFC's discussion of the appropriations bill to "emphasize the importance of this". He also urged people from the land grant community to be present to support the funding request.

Senator Sanchez suggested that Mr. Alvin Garcia make a personal presentation to the LFC in support of his request for funding.

Representative Miguel Garcia asked for, and received, a consensus to draft a letter in support of funding for the GHTD and to have himself, as committee chair, and Vice Chair Martinez address the LFC on the issue.

Larry Rivera, a member of the RCCLA, said that if the RCCLA lands are taken away and given back to the land grant, it would be taking from the poor to give to the poor. He also noted that the association did not sell elk, as suggested earlier in the day, but sold permits to raise money to pay taxes and to pay for upkeep of the land.

After a few comments from the audience, the meeting adjourned at 6:11 p.m.

## **Tuesday, July 24**

The committee took a tour of the San Antonio del Rio Colorado Land Grant, including the MolyCorp mine.

There being no further business, the task force adjourned at 11:50 a.m.